

Melody Conrad

May 14, 2008

<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION - - - - -</p> <p>Raymond Gibson, :</p> <p>Plaintiff, :</p> <p>vs. : Case No. 07-377 Judge Marbley</p> <p>The Shelly Company, : Magistrate Judge Abel</p> <p>Defendant. :</p> <p style="text-align: center;">- - - - -</p> <p style="text-align: center;">DEPOSITION OF MELODY CONRAD</p> <p style="text-align: center;">- - - - -</p> <p style="text-align: center;">Taken at Spectrum Reporting LLC 333 East Stewart Avenue Columbus, OH 43206 May 14, 2008, 1:50 p.m.</p> <p style="text-align: center;">- - - - -</p> <p style="text-align: center;">Spectrum Reporting LLC 333 Stewart Avenue, Columbus, Ohio 43206 614-444-1000 or 800-635-9071 www.spectrumreporting.com</p> <p style="text-align: center;">- - - - -</p>	<p style="text-align: right;">3</p> <p>1 Wednesday Afternoon Session</p> <p>2 May 14, 2008, 1:50 p.m.</p> <p>3 - - - - -</p> <p>4 S T I P U L A T I O N S</p> <p>5 - - - - -</p> <p>6 It is stipulated by counsel in attendance that</p> <p>7 the deposition of Melody Conrad, a witness herein,</p> <p>8 called by the Plaintiff for cross-examination, may</p> <p>9 be taken at this time by the notary by notice and</p> <p>10 agreement that said deposition may be reduced to</p> <p>11 writing in stenotypy by the notary, whose notes</p> <p>12 may thereafter be transcribed out of the presence</p> <p>13 of the witness; that proof of the official</p> <p>14 character and qualification of the notary is</p> <p>15 waived; that the signature of the witness to the</p> <p>16 transcript of said deposition is expressly waived</p> <p>17 by counsel and the witness; said deposition to</p> <p>18 have the same force and effect as though signed by</p> <p>19 the said Melody Conrad.</p> <p>20 - - - - -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 ON BEHALF OF PLAINTIFF:</p> <p>4 Teresa Cunningham, Esq.</p> <p>5 71 Cavalier Boulevard, Suite 100</p> <p>6 Florence, KY 41042</p> <p>7</p> <p>8 ON BEHALF OF DEFENDANT:</p> <p>9 Frantz Ward</p> <p>10 127 Public Square</p> <p>11 Cleveland, OH 44114</p> <p>12 By Brian J. Kelly, Esq.</p> <p>13</p> <p>14 ON BEHALF OF WITNESS:</p> <p>15 State of Ohio Assistant Attorney General</p> <p>16 Employment Law Section</p> <p>17 150 E. Gay Street, 22nd Floor</p> <p>18 Columbus, OH 43215</p> <p>19 By Pooja Alag Bird, Esq.</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Raymond Gibson</p> <p>23</p> <p>24</p>	<p style="text-align: right;">4</p> <p>1 I N D E X</p> <p>2 Examination By Page</p> <p>3 Ms. Cunningham - Cross 5</p> <p>4 Mr. Kelly - Cross 38</p> <p>5 Ms. Cunningham - Further Cross 41</p> <p>6 Plaintiff's Exhibits Page</p> <p>7 20 - Letter to Montgomery from Yoakum, 27</p> <p>8 3-27-07</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 (Exhibits attached to the original transcript.)</p> <p>24</p>

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<p>1 Melody Conrad</p> <p>2 being first duly sworn, testifies and says as</p> <p>3 follows:</p> <p>4 CROSS-EXAMINATION</p> <p>5 BY MS. CUNNINGHAM:</p> <p>6 Q. Could you state your name for the</p> <p>7 record and spell your last name, please.</p> <p>8 A. Melody Conrad, C-O-N-R-A-D.</p> <p>9 Q. My name is Teresa Cunningham, I</p> <p>10 represent Ray Gibson in the case captioned Gibson</p> <p>11 vs. Shelly Company.</p> <p>12 We're here today for your deposition.</p> <p>13 Have you been deposed before?</p> <p>14 A. No.</p> <p>15 Q. Okay. I'll be asking you a series of</p> <p>16 questions. If you can't hear the question or you</p> <p>17 don't understand me, please ask me to repeat it;</p> <p>18 otherwise, I'll assume that you understand the</p> <p>19 question.</p> <p>20 Where are you currently employed?</p> <p>21 A. ODOT.</p> <p>22 Q. And what's your position at ODOT?</p> <p>23 A. I'm a transportation tech 1.</p> <p>24 Q. And when were you first hired by ODOT?</p>	<p>1 A. A transportation tech 1.</p> <p>2 Q. And were you eventually moved out of</p> <p>3 that position?</p> <p>4 A. No.</p> <p>5 Q. Okay. There was some point when you</p> <p>6 were doing EEO contract compliance reviews?</p> <p>7 A. Uh-huh.</p> <p>8 Q. What year was that?</p> <p>9 A. I started doing contract compliance</p> <p>10 reviews 15 years ago.</p> <p>11 Q. Okay. Maybe I'm misunderstanding.</p> <p>12 That's the construction project specialist</p> <p>13 position?</p> <p>14 A. No. The construction project</p> <p>15 specialist is where I oversaw projects.</p> <p>16 Q. Okay.</p> <p>17 A. And then they promoted me over to a</p> <p>18 transportation tech 1.</p> <p>19 Q. Oh, I see.</p> <p>20 A. And gave me the EEO job duties.</p> <p>21 Q. Okay. I see.</p> <p>22 And during what years were you doing</p> <p>23 that?</p> <p>24 A. I've been doing it for the last 15</p>
<p>1 A. 1988.</p> <p>2 Q. What was your position?</p> <p>3 A. Project inspector 1.</p> <p>4 Q. And were you eventually promoted or</p> <p>5 moved out of that position?</p> <p>6 A. Yes.</p> <p>7 Q. And what position were you moved into?</p> <p>8 A. A construction project specialist 1.</p> <p>9 Q. I'm sorry?</p> <p>10 A. A construction project specialist 1.</p> <p>11 Q. What were your job duties?</p> <p>12 A. I oversaw projects, inspectors. It was</p> <p>13 inspection.</p> <p>14 Q. What do you mean by you oversaw</p> <p>15 projects?</p> <p>16 A. I was the inspector on the project. We</p> <p>17 made sure that the work got done.</p> <p>18 Q. Okay. And were you moved out of that</p> <p>19 position?</p> <p>20 A. Yes.</p> <p>21 Q. And when was that?</p> <p>22 A. It's been 15 years ago.</p> <p>23 Q. Okay. What position were you moved</p> <p>24 into?</p>	<p>1 years.</p> <p>2 Q. Okay. And you're still doing it?</p> <p>3 A. Yes.</p> <p>4 Q. Does ODOT assign transportation techs</p> <p>5 to certain companies to do the compliance reviews?</p> <p>6 A. No. You're assigned by your district.</p> <p>7 Q. Okay. You're assigned by district.</p> <p>8 And you do the compliance reviews on The Shelly</p> <p>9 Company?</p> <p>10 A. Yes.</p> <p>11 Q. And how long have you been doing those?</p> <p>12 A. 15 years.</p> <p>13 Q. Okay. You've been the only person</p> <p>14 going out there for 15 years?</p> <p>15 A. No. I've been the only one the last</p> <p>16 five years that's been out there doing reviews for</p> <p>17 them.</p> <p>18 Q. I'm sorry. Who went out there before</p> <p>19 you?</p> <p>20 A. Before it was -- it was whoever --</p> <p>21 whatever district you worked in, the contractor</p> <p>22 worked in, that that district could do the review</p> <p>23 on that contractor. Then five years ago, ODOT</p> <p>24 changed and said just do them within your district</p>

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<p>9</p> <p>1 only so that there's no traveling.</p> <p>2 Q. Where you live?</p> <p>3 A. Where the contractor resides.</p> <p>4 Q. Okay. Okay. I -- I guess I'm still</p> <p>5 not understanding. Why were you assigned to</p> <p>6 Shelly?</p> <p>7 A. Because they're within my -- they're</p> <p>8 within my district. I have seven counties.</p> <p>9 Q. Okay.</p> <p>10 A. And if the contractor's main office is</p> <p>11 within my seven counties, I do the reviews now.</p> <p>12 Q. Okay.</p> <p>13 A. Before, it's where they -- even though</p> <p>14 they might have been in my district but they</p> <p>15 worked in another district with a dollar amount,</p> <p>16 then that district would do the review.</p> <p>17 Q. Oh.</p> <p>18 A. But there was a lot of traveling</p> <p>19 involved, overnight stays and that, so ODOT had</p> <p>20 stopped that. And now we just do our reviews</p> <p>21 within our districts.</p> <p>22 Q. Okay. Tell me, when you do a contract</p> <p>23 compliance review, what do you do?</p> <p>24 A. I just go in there to make sure that</p>	<p>11</p> <p>1 promote to a management position.</p> <p>2 Q. Okay. So do you just report what they</p> <p>3 tell you?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you review documentation?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you know Candace Gales?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. When did you first meet</p> <p>10 Ms. Gales?</p> <p>11 A. About 20 years ago.</p> <p>12 Q. Okay. How did you meet her?</p> <p>13 A. Through ODOT.</p> <p>14 Q. Okay. That was before you were doing</p> <p>15 these compliance reviews?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Do you recall the circumstances when</p> <p>18 you met her?</p> <p>19 A. She was in central office in the EEO</p> <p>20 office when I met her.</p> <p>21 Q. With The Shelly Company?</p> <p>22 A. No, with ODOT.</p> <p>23 Q. Oh, with ODOT. Oh, she was with ODOT</p> <p>24 and then went over to The Shelly Company?</p>
<p>10</p> <p>1 they are showing good faith efforts in meeting</p> <p>2 their minority and female goals.</p> <p>3 Q. What do you mean by they're meeting</p> <p>4 their good faith efforts to meet goals?</p> <p>5 A. Good faith efforts. Goals is a goal;</p> <p>6 it's not a requirement. And we look at it to see</p> <p>7 good faith efforts. Are they -- if you're a union</p> <p>8 contractor, are you sending letters out to the</p> <p>9 union requesting minorities and female for that</p> <p>10 classification, and any replies back from the</p> <p>11 unions.</p> <p>12 Q. Do your reviews only cover union</p> <p>13 employees?</p> <p>14 A. If the contractor is a union. Shelly</p> <p>15 Company is a union contractor.</p> <p>16 Q. Okay. Let's just focus on Shelly.</p> <p>17 A. Okay.</p> <p>18 Q. So your review would only cover the</p> <p>19 union employees?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Did your review cover promotions</p> <p>22 for union employees into management?</p> <p>23 A. We looked at it, see if they done any</p> <p>24 promotions. But we can't tell them they have to</p>	<p>12</p> <p>1 A. Uh-huh.</p> <p>2 Q. Are you friends?</p> <p>3 A. Just talk -- not -- no. Not -- we're</p> <p>4 business friends but not outside of business, no.</p> <p>5 Q. Okay. Do you ever talk to her outside</p> <p>6 of these compliance reviews?</p> <p>7 A. Only if I have a problem with a --</p> <p>8 getting reports from her that I need.</p> <p>9 Q. Okay. How often do you do the reviews?</p> <p>10 A. Once a year.</p> <p>11 Q. Are you on a schedule, like every --</p> <p>12 whatever time every year annually you go in and do</p> <p>13 the reviews?</p> <p>14 A. Not necessarily. I might do them in</p> <p>15 September, any time between September and</p> <p>16 December.</p> <p>17 Q. Okay. When you go in to do a review,</p> <p>18 what documentation do you look at?</p> <p>19 A. We look at their trainees, who they</p> <p>20 have on board as their trainees and apprentices,</p> <p>21 and at their minorities and females, and any good</p> <p>22 faith efforts that they've done in trying to meet</p> <p>23 their minority and female goals per</p> <p>24 classification.</p>

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<p>13</p> <p>1 Q. If you could turn to Exhibit No. 1.</p> <p>2 You might want to flip that stack over. Is that</p> <p>3 Exhibit 1?</p> <p>4 A. Yeah.</p> <p>5 Q. If you want to take a minute and look</p> <p>6 at that.</p> <p>7 A. Okay.</p> <p>8 Q. Do you need a few more minutes or do</p> <p>9 you recognize that document?</p> <p>10 A. I recognize this, yes.</p> <p>11 Q. Okay. Now, this is a Shelly Company</p> <p>12 contractor compliance review dated March 9th of</p> <p>13 '05, and your name is below that. Did you prepare</p> <p>14 this report?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Was your meeting -- well, strike</p> <p>17 that.</p> <p>18 You met with Ms. Gales to prepare this</p> <p>19 report?</p> <p>20 A. No. I -- she sent me her</p> <p>21 documentation, I went over it, and then I met with</p> <p>22 these guys and we went over the report.</p> <p>23 Q. No. I'm sorry. Ms. Gales sent you the</p> <p>24 documentation for you to look at?</p>	<p>15</p> <p>1 A. Okay. "Is there" -- okay.</p> <p>2 Q. And it's marked "yes" next to that. Do</p> <p>3 you see that?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you recall what evaluation process</p> <p>6 you were told was being conducted annually?</p> <p>7 A. They said if they had an opening, then</p> <p>8 they had an evaluation process that they go</p> <p>9 through to see who would be promoted into a</p> <p>10 position.</p> <p>11 Q. Did they tell you what the evaluation</p> <p>12 process was?</p> <p>13 A. No. I didn't ask because there was --</p> <p>14 their paperwork didn't show that they had an</p> <p>15 opening for a promotion. The only time I would</p> <p>16 ask for that is if there's an opening for a</p> <p>17 promotion.</p> <p>18 Q. Under that it's got "documentation</p> <p>19 provided" with Xs next to several different items.</p> <p>20 Are these all of the items that they sent you?</p> <p>21 A. Uh-huh. Under where it says, "list of</p> <p>22 employees promoted," there was a page in there</p> <p>23 that said none was promoted.</p> <p>24 Q. Okay. Turn to page 11, under A</p>
<p>14</p> <p>1 A. Right.</p> <p>2 Q. You looked at it, and then you met with</p> <p>3 who?</p> <p>4 A. Dan Montgomery, Rob Sharrett, Candace</p> <p>5 Gales, Becky Nuthers and Terry George.</p> <p>6 Q. So she sent you the documentation, you</p> <p>7 went over it, prepared the report, and then you</p> <p>8 met with everyone?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And it was your opinion that they were</p> <p>11 in compliance?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to page 8 of the</p> <p>14 report, under Training, B, in the middle of the</p> <p>15 page next to the paragraph that reads: "Is there</p> <p>16 an evaluation process conducted annually of at</p> <p>17 least all minority and female personnel for</p> <p>18 promotional opportunities to encourage these</p> <p>19 employees to seek or prepare for such</p> <p>20 opportunities."</p> <p>21 Do you see that paragraph?</p> <p>22 A. At the top here?</p> <p>23 Q. No. It's in the middle of the page on</p> <p>24 page 8.</p>	<p>16</p> <p>1 Personnel Operations.</p> <p>2 A. Uh-huh.</p> <p>3 Q. It's marked "yes" next to "Is there an</p> <p>4 annual review of minority and female employees for</p> <p>5 promotional opportunities?" Do you know what you</p> <p>6 based that on?</p> <p>7 A. They said they do have one if there's</p> <p>8 an opening for management position for promotion.</p> <p>9 They don't have any -- if they didn't have a</p> <p>10 promotion -- an opening for a promotion, they</p> <p>11 didn't have a review done that year.</p> <p>12 Q. So, in other words, if they have an</p> <p>13 opening, then they annually review minorities and</p> <p>14 females?</p> <p>15 A. If they have an opening for a position.</p> <p>16 Q. Are you aware of any minority or female</p> <p>17 employees that have been promoted into foreman</p> <p>18 positions?</p> <p>19 A. No. I haven't seen an opening for one</p> <p>20 in their office.</p> <p>21 Q. But are you aware of any?</p> <p>22 A. No.</p> <p>23 Q. Okay. And the next category is marked</p> <p>24 "yes." "Is there encouragement of minority and</p>

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<p>17</p> <p>1 female employees to seek promotional 2 opportunities?" Did they tell you what this 3 encouragement was? 4 A. I -- I don't have the review here in 5 front of me, so I really don't know. 6 Q. Okay. The next category is: "Are 7 there efforts to assist minority and female 8 employees to prepare for promotion?" And that's 9 marked "yes." Do you recall what efforts they 10 told you they used to assist minority and female 11 employees to prepare for promotion? 12 A. No, I don't. I -- like I said, I don't 13 have the review here, the whole review in -- I 14 mean, this is just part of it. The whole 15 documentation, I don't have it in front of me so I 16 -- I can't really -- 17 Q. I subpoenaed documentation from ODOT. 18 And if you would like to go off the record, you 19 can take a look at that. 20 MS. CUNNINGHAM: Let's go off the 21 record and give her an opportunity to look at it. 22 (A short recess is taken.) 23 Q. Have you now had an opportunity to 24 review most of that stack of documents?</p>	<p>19</p> <p>1 Miller acquisition, the Columbus Construction 2 Group did not promote any employees during the 3 2006 construction season." But that evaluation is 4 2005. I'm sorry -- the compliance review is 2005. 5 Also, if you could turn to Exhibit 6 No. 18. And I know it's going to be kind of hard 7 for you, but if you can keep all the exhibits 8 marked in, like, one stack. 9 MS. ALAG BIRD: Here, let's do this. 10 Let's flip these over as you go through these 11 here, keep them in order. Do you see 18? Okay. 12 MR. KELLY: Can I just see whatever 13 document you're discussing or referring to? 14 MS. CUNNINGHAM: I'm sorry. Do you 15 have a copy? It's Exhibit -- this one. I'm 16 referring her back to Exhibit 18. 17 MR. KELLY: Well, I want to see what it 18 is you're -- 19 MS. CUNNINGHAM: This isn't Exhibit 18. 20 MR. KELLY: I understand. 21 Q. Now, Exhibit No. 18, you've got that in 22 front of you? 23 A. Yes. 24 Q. That says at the bottom, the last</p>
<p>18</p> <p>1 A. Uh-huh. Yes. 2 Q. Can you tell what documentation you 3 relied on? 4 A. From the stuff -- from the letters that 5 came from the union, it says that they're 6 responding to Shelly Company's letter on hiring. 7 And it just -- the only thing, it just says that 8 they are under -- pursuant to state and federal 9 laws, mandates our collective bargaining as well 10 as a court order to operate in nondiscriminatory 11 hiring from the halls. And also this is the year 12 where they did not do any -- the letter here that 13 I'm showing here from The Shelly Company, that all 14 of their available positions were hired through 15 the Miller -- when they overtook the -- when they 16 bought out the Miller Company, they put their 17 employees in those vacant positions. So there was 18 no positions within hiring for that year. 19 MR. KELLY: Teresa, obviously, not this 20 moment, but can you make copies for me of whatever 21 is discussed? 22 MS. CUNNINGHAM: Sure. 23 Q. Okay. This is a letter dated December 24 the 19th of 2006. And it says: "Due to the</p>	<p>20</p> <p>1 paragraph, that Ron Gutridge, Caucasian, filled in 2 for Brad Boyer. Mr. Boyer moved out of a former 3 position in July of '05. But Mr. Gutridge was not 4 formally promoted into a foreman position until 5 2006. So there was a promotion in the Thornville 6 Division -- 7 MR. KELLY: Well, that -- 8 Q. -- in 2006? 9 MR. KELLY: That talks about during the 10 2006 season. Obviously, I'm -- I'm not going to 11 interfere. You might not be talking apples to 12 apples. I encourage you to look at that. 13 A. That wasn't on any of the paperwork 14 when I done the review, this one here. 15 Q. Right. That was produced per court 16 order. So referring back to this document that 17 you pointed out that there were no promotions in 18 the Columbus Construction Group, are you aware 19 that the construction -- Columbus Construction 20 Group was part of -- 21 MR. KELLY: Melody, I'm sorry. Please 22 don't put that away. 23 Q. That the Columbus Construction Group 24 was part of Thornville?</p>

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<p>21</p> <p>1 MR. KELLY: During what time period?</p> <p>2 MS. CUNNINGHAM: It was part of -- it</p> <p>3 was spun off; and I don't recall exactly --</p> <p>4 MR. KELLY: That's why I asked the time</p> <p>5 period.</p> <p>6 MS. CUNNINGHAM: -- what year. Well,</p> <p>7 you tell me the time period.</p> <p>8 MR. KELLY: I don't know. I think Rob</p> <p>9 testified about it.</p> <p>10 MS. CUNNINGHAM: Yeah, and I asked him.</p> <p>11 Q. But are you aware the Columbus Group</p> <p>12 used to be a part of Thornville?</p> <p>13 A. No.</p> <p>14 Q. Okay. You weren't notified of any of</p> <p>15 that?</p> <p>16 A. No.</p> <p>17 Q. Okay. You evaluate The Shelly Company</p> <p>18 as a whole?</p> <p>19 A. Right.</p> <p>20 Q. You don't evaluate the different</p> <p>21 divisions?</p> <p>22 A. No.</p> <p>23 Q. All right. But as far as you knew,</p> <p>24 there were no promotions in 2006, correct?</p>	<p>23</p> <p>1 diaries related to monitoring and action taken as</p> <p>2 a result of monitoring, listing of employees</p> <p>3 promoted, personnel files, and interviews. Do you</p> <p>4 recall if you were ever given personnel files?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you ask Ms. Gales why you</p> <p>7 were not given personnel files?</p> <p>8 A. I just asked for the list of all the</p> <p>9 personnel and their start dates.</p> <p>10 Q. Okay.</p> <p>11 A. That's all that's always been required.</p> <p>12 We never ask for their personnel files. I mean, I</p> <p>13 can look at them, but I never ask for copies of</p> <p>14 them.</p> <p>15 Q. Did you ever look for personnel files</p> <p>16 at The Shelly Company?</p> <p>17 A. Huh-uh.</p> <p>18 Q. Why not?</p> <p>19 MR. KELLY: I'm sorry. Is that a no?</p> <p>20 THE WITNESS: No. It's no.</p> <p>21 Q. Why not?</p> <p>22 A. They've always given me a list of the</p> <p>23 personnel. It's not in here.</p> <p>24 Q. So, again, they just provide you a</p>
<p>22</p> <p>1 A. Right.</p> <p>2 Q. Okay. So you were not told that</p> <p>3 Mr. Gutridge was formally promoted in 2006?</p> <p>4 A. No, not that I know of, not that I'm</p> <p>5 aware of.</p> <p>6 Q. Okay. All right. Now, back to -- or</p> <p>7 I'm sorry. Are there any other documents that you</p> <p>8 relied on that you discovered in that file?</p> <p>9 A. Huh-uh. No.</p> <p>10 Q. Okay. I just want to make sure all of</p> <p>11 these kind of stay separate from the exhibits.</p> <p>12 A. I just flipped it upside down.</p> <p>13 Q. Okay. Would it be fair to say that</p> <p>14 when you complete these contract compliance</p> <p>15 reviews, that you just rely on what Shelly</p> <p>16 employees tell you?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. On page 11 of Exhibit No. 1 in</p> <p>19 the middle of the page where it's got</p> <p>20 "Documentation Provided" --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- and it's marked that -- I'm assuming</p> <p>23 that you received a copy of the EEO officer's job</p> <p>24 description, records, reports, analysis and</p>	<p>24</p> <p>1 printout of the personnel --</p> <p>2 A. Yes.</p> <p>3 Q. -- with what, their race next to it?</p> <p>4 A. Classification, hire dates.</p> <p>5 Q. And the race -- is the race listed?</p> <p>6 A. I think so.</p> <p>7 Q. All right. If you could turn to page</p> <p>8 14 of this report, under D, where the X is marked</p> <p>9 in the "no" box.</p> <p>10 A. Uh-huh.</p> <p>11 Q. "Are there formal charges of</p> <p>12 discrimination pending against the contractor,</p> <p>13 including EEOC or OCRC charges?" That's marked</p> <p>14 "no." Did you get that information from</p> <p>15 Ms. Gales?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Were you aware that Mr. Gibson</p> <p>18 had filed an EEOC charge?</p> <p>19 A. No.</p> <p>20 Q. Okay. Do you look at any</p> <p>21 documentation, or do you just rely on what</p> <p>22 Ms. Gales tells you?</p> <p>23 A. If -- I just ask the question. I go</p> <p>24 through and ask the questions. And then if</p>

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<p>25</p> <p>1 there's any documentation that says, yes, there</p> <p>2 is, then they have to provide it.</p> <p>3 Q. Okay. But they didn't provide you a</p> <p>4 copy of Mr. Gibson's charge?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 MR. KELLY: Are you representing for</p> <p>8 the record that a charge was pending at the time</p> <p>9 the information was provided?</p> <p>10 MS. CUNNINGHAM: I'm fairly certain</p> <p>11 that it was filed in January.</p> <p>12 MR. KELLY: Do you know when -- I mean,</p> <p>13 I don't know when -- you know the date of her</p> <p>14 report. You don't know when Candace provided the</p> <p>15 information, obviously.</p> <p>16 MS. CUNNINGHAM: No. But --</p> <p>17 Q. When does Ms. Gales provide this</p> <p>18 information to you?</p> <p>19 A. Our reviews is one year behind. So if</p> <p>20 it's a 2005 review, it's actually 2004 projects</p> <p>21 we're looking at. So we're always a year behind.</p> <p>22 Q. But she would provide you current</p> <p>23 information?</p> <p>24 A. No. Just for what we were asking for.</p>	<p>27</p> <p>1 Q. Right.</p> <p>2 MR. ALAG BIRD: Remember to answer yes</p> <p>3 or no so the court reporter can take down your</p> <p>4 answer.</p> <p>5 THE WITNESS: Yes. I'm sorry.</p> <p>6 MS. CUNNINGHAM: I don't have an extra</p> <p>7 copy of this one.</p> <p>8 MR. KELLY: Okay. If you are going to</p> <p>9 ask her about it, I guess I would like to have a</p> <p>10 copy of it, please.</p> <p>11 (A short recess is taken.)</p> <p>12 Q. I'm handing you what's been marked as</p> <p>13 Plaintiff's Exhibit 20. If you would like, take a</p> <p>14 few minutes and look at that document.</p> <p>15 - - - - -</p> <p>16 Thereupon, Plaintiff's Exhibit 20 is</p> <p>17 marked for purposes of identification.</p> <p>18 - - - - -</p> <p>19 Q. Okay. Can you tell me what Exhibit</p> <p>20 No. 20 is?</p> <p>21 A. It's a review on The Shelly Company</p> <p>22 done on January 25th of '07.</p> <p>23 Q. And that was prepared by you?</p> <p>24 A. Yes.</p>
<p>26</p> <p>1 I'm looking for the dates.</p> <p>2 Q. Oh, okay. Is that in the front?</p> <p>3 MR. ALAG BIRD: We're just looking at</p> <p>4 this document right now. Just look at this.</p> <p>5 THE WITNESS: Okay.</p> <p>6 A. Yeah. On the one page it says, Other</p> <p>7 sufficient observations and comments for the</p> <p>8 review period of 1-1-04 through 12-31 of '04 is</p> <p>9 this review.</p> <p>10 Q. Okay. Are you aware that Mr. Gibson</p> <p>11 filed an EEOC charge in 2004?</p> <p>12 A. No.</p> <p>13 Q. And you weren't told that, obviously,</p> <p>14 correct?</p> <p>15 A. No.</p> <p>16 Q. This document has a review date of</p> <p>17 March the 9th of '05. Did you meet with Ms. Gales</p> <p>18 on that date, or is that the date you prepared the</p> <p>19 report?</p> <p>20 A. No, that's the day we met.</p> <p>21 Q. Oh, okay. So if you're a year behind,</p> <p>22 wouldn't it be fair to say that your '07 report</p> <p>23 reflects what went on in '06?</p> <p>24 A. Uh-huh.</p>	<p>28</p> <p>1 Q. And as we just discussed, you're a year</p> <p>2 behind, so the information in this document would</p> <p>3 have covered 2006?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Correct?</p> <p>6 And I believe you testified that you</p> <p>7 were told that once an opening was identified,</p> <p>8 then this evaluation process would be conducted to</p> <p>9 see that all minority and female personnel have an</p> <p>10 opportunity at that promotion, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And every year you had been told there</p> <p>13 were no openings, right?</p> <p>14 A. Correct.</p> <p>15 Q. And then I referred you to Exhibit</p> <p>16 No. 18, which reflects that, in fact, a</p> <p>17 Mr. Gutridge was promoted in 2006, correct?</p> <p>18 A. That's what this says, yes.</p> <p>19 Q. Were you aware of that when you</p> <p>20 prepared this report?</p> <p>21 A. No.</p> <p>22 Q. Okay. So it would be fair to say that</p> <p>23 you were not provided any documentation showing</p> <p>24 that promotion for the 2006 year?</p>

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<p>29</p> <p>1 A. Right.</p> <p>2 Q. Okay. If you could turn to page 8 of</p> <p>3 Exhibit 20, this is the section we had discussed</p> <p>4 for the earlier year regarding the evaluation</p> <p>5 process. And did you cover this section with</p> <p>6 Ms. Gales when you went through this review?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you recall what she told you?</p> <p>9 A. No, I don't.</p> <p>10 Q. Are you aware of any females or</p> <p>11 minorities being promoted in The Shelly Company in</p> <p>12 the years that you've done the contract compliance</p> <p>13 reviews?</p> <p>14 A. No.</p> <p>15 Q. So would it be fair to say that --</p> <p>16 well, strike that.</p> <p>17 Since you had said that in response to</p> <p>18 the Training B for the evaluation process, were</p> <p>19 you always told that there was no opening, so,</p> <p>20 therefore, there was no process conducted of</p> <p>21 minorities and females to see if they would be</p> <p>22 available for that promotion?</p> <p>23 MR. KELLY: Objection.</p> <p>24 MR. ALAG BIRD: Go ahead and answer the</p>	<p>31</p> <p>1 opening?</p> <p>2 A. No.</p> <p>3 Q. That's not true?</p> <p>4 A. No, that's true.</p> <p>5 Q. Oh, okay. So it is true.</p> <p>6 Okay. So they've never gotten to this</p> <p>7 issue of the evaluation process because it was</p> <p>8 your understanding that there was never a job</p> <p>9 opening?</p> <p>10 A. Right.</p> <p>11 Q. Did you think that was odd?</p> <p>12 MR. ALAG BIRD: Objection. Go ahead</p> <p>13 and answer.</p> <p>14 Q. Does that strike you as being odd?</p> <p>15 MR. ALAG BIRD: Objection. Go ahead</p> <p>16 and answer the question.</p> <p>17 A. Not really.</p> <p>18 Q. Not really?</p> <p>19 A. I mean, being a large company, I don't</p> <p>20 -- young -- young foremens, I don't see were one</p> <p>21 of them is going to leave in a hurry.</p> <p>22 Q. But this just isn't about foreman</p> <p>23 positions. So this question on page 8 of the</p> <p>24 compliance review, is it restricted to foreman?</p>
<p>30</p> <p>1 question.</p> <p>2 A. I just -- I don't understand the</p> <p>3 question.</p> <p>4 Q. When we went through the previous</p> <p>5 exhibit --</p> <p>6 A. Okay.</p> <p>7 Q. -- it was my understanding we went</p> <p>8 through your '05 evaluation, which was for the '04</p> <p>9 time period. It was my understanding when we got</p> <p>10 to page No. 8 and this section under Training, and</p> <p>11 I asked you about if there -- you had marked "yes"</p> <p>12 in response to the question: "Is there an</p> <p>13 evaluation process conducted annually of at least</p> <p>14 all minority and female personnel for promotional</p> <p>15 opportunities?"</p> <p>16 A. Okay.</p> <p>17 Q. That you were told that only if there</p> <p>18 is an opening identified, that then The Shelly</p> <p>19 Company tells you whether or not this process has</p> <p>20 been complied with; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Is it true that all the years you have</p> <p>23 been conducting compliance reviews on The Shelly</p> <p>24 Company that they have never identified an</p>	<p>32</p> <p>1 A. No.</p> <p>2 Q. Turn back to Exhibit No. 18, please.</p> <p>3 A. Okay.</p> <p>4 Q. Okay. Exhibit No. 18 in the second</p> <p>5 paragraph, it says, "During the 2004 season The</p> <p>6 Shelly Company promoted Dave Scott, a Caucasian,</p> <p>7 from position of distributor man." So if we go</p> <p>8 back to Exhibit No. 1, okay, which is your 2005</p> <p>9 report, which actually covers the year 2004,</p> <p>10 correct?</p> <p>11 A. Yeah.</p> <p>12 Q. Were you told that there was an opening</p> <p>13 and that Dave Scott was filled -- filled that</p> <p>14 opening?</p> <p>15 A. No.</p> <p>16 Q. No.</p> <p>17 Okay. And when we turn to page 8,</p> <p>18 again, of Exhibit No. 1, and you had told me that</p> <p>19 they told you if they identified a position that</p> <p>20 then they went through this evaluation process of</p> <p>21 all minority and female individuals, correct?</p> <p>22 MR. ALAG BIRD: Objection. You can</p> <p>23 answer.</p> <p>24 A. Yes.</p>

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<p>33</p> <p>1 Q. Okay. And isn't it true that they did 2 not tell you that there were any positions open? 3 MR. ALAG BIRD: Objection. You can 4 answer. 5 A. Yes. 6 Q. And based on Exhibit No. 18, that 7 appears to not be a true statement, correct? 8 MR. KELLY: Objection. 9 MR. ALAG BIRD: Objection. 10 MR. KELLY: I object to form. What in 11 Exhibit 18? Oh, Exhibit 18. I thought you meant 12 No. 1. Go ahead. 13 Q. You may answer the question. 14 A. Yes. 15 Q. Okay. Let me take a break. 16 (A short recess is taken.) 17 Q. If you can look at Exhibit No. 1, which 18 is your 2005 compliance review for the year 2004, 19 what documents did Shelly provide to you? 20 A. It's in the file. I don't have them 21 here. It's -- it's about something like these. 22 Q. Do you mean that entire stack or just 23 that small stack? 24 A. Oh, no, there was a big stack.</p>	<p>35</p> <p>1 Q. Oh, I'm sorry. Maybe I misunderstood 2 your statement. Yes. 3 Do they provide you a copy of that? 4 A. No. I just have copies of the reports. 5 Q. You're talking about the statistical 6 reports? 7 A. Uh-huh. 8 Q. The long 11-by-18 -- 9 A. Uh-huh. 10 MR. ALAG BIRD: Answer yes or no. 11 A. Yes. 12 Q. Do those statistical reports reflect 13 promotions, or do you know? 14 A. I don't know. 15 Q. Okay. Do they produce any analysis? 16 A. I don't know. 17 Q. Did they produce any diaries related to 18 monitoring and action as a result of monitoring? 19 A. I don't know. 20 Q. And I believe they did provide a list 21 of employees promoted? 22 A. Uh-huh. 23 Q. And that was none? 24 A. Right.</p>
<p>34</p> <p>1 Q. Because when I subpoenaed the 2 documents, there were stacks and stacks. 3 A. Right. 4 Q. If you went through all that stuff, is 5 it -- are the documents they provided you in that 6 stack, or do you not know until you actually -- 7 A. I do not know until I would compare it 8 with what I have in my files. 9 Q. Okay. And we covered they didn't 10 produce any personnel files -- 11 A. No. 12 Q. -- correct? 13 Did they provide you any job 14 description records? And this, again, comes out 15 of page 11 of Exhibit No. 1, in the middle of the 16 page it says, "Documentation Provided." 17 A. For the EEO officer? 18 Q. Well, it's -- as I understand this, 19 this relates to the information before -- above 20 it -- I'm sorry -- above it for promotional 21 opportunities. It's under Section A, "Personnel 22 Operations." 23 A. But it says copy of -- of EEO officer's 24 job description.</p>	<p>36</p> <p>1 Q. They told you no, none? 2 A. Right. 3 Q. And that would have been for the year 4 2004, correct? 5 A. Yes. 6 Q. Okay. And we've discussed personnel 7 files; they didn't produce those. And did they 8 produce any documentation regarding interviews? 9 A. No. 10 Q. Okay. Would you explain your job 11 duties as related to reporting Shelly's promotions 12 of minorities and females? 13 MR. ALAG BIRD: Objection to the form 14 of the question. 15 A. I don't -- I don't understand that. 16 MR. ALAG BIRD: Go ahead and answer her 17 question. 18 A. That's not one of my job duties. 19 Q. Okay. Tell me what these compliance 20 reviews are designed to do. 21 A. To make sure there is good faith 22 efforts in meeting their minority and female 23 goals. 24 Q. And those goals are simply for hiring;</p>

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<p>37</p> <p>1 they're not promotional?</p> <p>2 A. Right.</p> <p>3 Q. Okay. So it would be fair to say, as</p> <p>4 far as you know, they haven't met goals for</p> <p>5 promotions?</p> <p>6 MR. KELLY: Objection.</p> <p>7 MR. ALAG BIRD: Objection.</p> <p>8 A. I don't do goals for --</p> <p>9 Q. For promotions?</p> <p>10 A. -- promotions.</p> <p>11 Q. So your report doesn't reflect that?</p> <p>12 A. No.</p> <p>13 Q. Not at all?</p> <p>14 A. Huh-uh.</p> <p>15 Q. So when you found they were in</p> <p>16 compliance, it didn't have anything to do with</p> <p>17 promotions, right?</p> <p>18 A. Right.</p> <p>19 MR. ALAG BIRD: Objection. Go ahead</p> <p>20 and answer.</p> <p>21 Q. It only had to do with statistics of</p> <p>22 individuals hired from the unions?</p> <p>23 A. Correct.</p> <p>24 MS. CUNNINGHAM: Let's go off the</p>	<p>39</p> <p>1 A. No.</p> <p>2 Q. That information is just simply not</p> <p>3 relevant; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. When you do your review, are you</p> <p>6 looking at Shelly company-wide, or do you just</p> <p>7 look at certain job classifications?</p> <p>8 A. I look at their construction job</p> <p>9 classifications.</p> <p>10 Q. Okay. Now, does that include the</p> <p>11 Asphalt Division and everything else?</p> <p>12 A. No. It's just the construction part of</p> <p>13 it.</p> <p>14 Q. Just construction.</p> <p>15 Does that include analysis of</p> <p>16 foreman-type positions?</p> <p>17 A. No, sir.</p> <p>18 Q. So you were referred by Ms. Cunningham</p> <p>19 to Exhibit 18, the document in your left hand</p> <p>20 there, ma'am.</p> <p>21 In light of the limited scope of your</p> <p>22 analysis, is the information contained in</p> <p>23 Exhibit 18 necessarily inconsistent with any of</p> <p>24 your reports?</p>
<p>38</p> <p>1 record.</p> <p>2 (A short recess is taken.)</p> <p>3 MS. CUNNINGHAM: I have no further</p> <p>4 questions.</p> <p>5 - - - - -</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. KELLY:</p> <p>8 Q. I have a couple. Ms. Conrad, my name</p> <p>9 is Brian Kelly. We met, well, just a short while</p> <p>10 ago this afternoon. I represent The Shelly</p> <p>11 Company in connection with a number of lawsuits</p> <p>12 and other actions brought by Ray Gibson. Today</p> <p>13 we're here in connection with one of Mr. Gibson's</p> <p>14 federal lawsuits. I have just a couple questions</p> <p>15 regarding that lawsuit.</p> <p>16 I believe you told Ms. Cunningham that</p> <p>17 evaluating The Shelly Company's promotional</p> <p>18 efforts is not a part of your review process; is</p> <p>19 that correct?</p> <p>20 A. Correct.</p> <p>21 Q. So the information about promotions at</p> <p>22 The Shelly Company, is that material at all to</p> <p>23 your findings as to whether Shelly is in</p> <p>24 compliance or not?</p>	<p>40</p> <p>1 A. No.</p> <p>2 Q. And is the information contained in</p> <p>3 Exhibit 18, in light of the limited scope of your</p> <p>4 analysis, necessarily inconsistent with any</p> <p>5 information that Shelly Company provided to you?</p> <p>6 A. I didn't understand your question.</p> <p>7 Q. Because it was a horrible question,</p> <p>8 ma'am.</p> <p>9 You have a limited scope of your</p> <p>10 analysis, right?</p> <p>11 A. Yes.</p> <p>12 Q. In light of that, the information in</p> <p>13 Exhibit 18, is that necessarily inconsistent with</p> <p>14 any information Shelly provided to you?</p> <p>15 A. No.</p> <p>16 Q. There were questions of you and of</p> <p>17 Ms. Gales today about whether you have some sort</p> <p>18 of relationship outside of work.</p> <p>19 A. No.</p> <p>20 Q. Did you ever reach any conclusions as</p> <p>21 to The Shelly Company's compliance or</p> <p>22 noncompliance because of your relationship with</p> <p>23 Ms. Gales or anyone else at The Shelly Company?</p> <p>24 A. No.</p>

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<p>41</p> <p>1 Q. Did you evaluate the data to the best</p> <p>2 of your ability and reach those conclusions that</p> <p>3 seemed justified in accordance with the</p> <p>4 regulations you administer?</p> <p>5 A. Yes.</p> <p>6 Q. And your conclusions were that as far</p> <p>7 as you could tell, The Shelly Company --</p> <p>8 MS. CUNNINGHAM: Objection, leading.</p> <p>9 Would you just answer -- ask her a question</p> <p>10 instead of giving her the answer and testifying.</p> <p>11 Q. I think you told Ms. Cunningham your</p> <p>12 conclusion, having done that, was that the company</p> <p>13 was in compliance; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Thank you, Ms. Conrad.</p> <p>16 MS. CUNNINGHAM: Do you have any</p> <p>17 questions?</p> <p>18 MR. ALAG BIRD: I do not.</p> <p>19 - - - - -</p> <p>20 FURTHER CROSS-EXAMINATION</p> <p>21 BY MS. CUNNINGHAM:</p> <p>22 Q. I have just a few follow-up.</p> <p>23 In response to Brian's question, you</p> <p>24 had stated that the report didn't reflect any --</p>	<p>43</p> <p>1 Q. Yes.</p> <p>2 MS. CUNNINGHAM: Okay. I have no</p> <p>3 further questions.</p> <p>4 MR. KELLY: Thank you for your time,</p> <p>5 Ms. Conrad.</p> <p>6 THE REPORTER: Is she reserving her</p> <p>7 right to read the transcript?</p> <p>8 MR. ALAG BIRD: You have the</p> <p>9 opportunity to read the transcript and review it</p> <p>10 for any inaccuracies only in transcription, but</p> <p>11 you can't change your testimony in any way. Would</p> <p>12 you like to read the transcript?</p> <p>13 THE WITNESS: No.</p> <p>14 MR. ALAG BIRD: We'll waive. Thanks.</p> <p>15 - - - - -</p> <p>16 Thereupon, the foregoing proceedings</p> <p>17 concluded at 2:45 p.m.</p> <p>18 - - - - -</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>42</p> <p>1 it was not inconsistent with what they told you.</p> <p>2 But yet when I questioned you -- and, again, refer</p> <p>3 to Exhibit No. 1, page 8. As I recall your</p> <p>4 testimony, and perhaps you're changing it now, but</p> <p>5 when we went through --</p> <p>6 MR. ALAG BIRD: Objection.</p> <p>7 Q. -- under B, under Training, I asked</p> <p>8 you -- that was marked "yes." I asked you about</p> <p>9 whether or not there was an evaluation process</p> <p>10 conducted annually of all -- at least all minority</p> <p>11 and female personnel. And, in fact, you testified</p> <p>12 that you were told that unless there is an</p> <p>13 opening, they identify an opening, they do not do</p> <p>14 an evaluation process, correct?</p> <p>15 A. Correct.</p> <p>16 Q. So you were not given any</p> <p>17 documentation; you weren't told there was an</p> <p>18 opening, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And this was an evaluation dated May</p> <p>21 17th of '05; it reflects the information for '04.</p> <p>22 And Exhibit No. 18 reflects that there was, in</p> <p>23 fact, a promotion in '04, correct?</p> <p>24 A. For a foreman, yes.</p>	<p>C E R T I F I C A T E</p> <p>1 State of Ohio : County of Franklin: SS</p> <p>2</p> <p>3 I, Stacy M. Upp, a Notary Public in and for the</p> <p>4 State of Ohio, certify that Melody Conrad was by me</p> <p>5 duly sworn to testify to the whole truth in the</p> <p>6 cause aforesaid; testimony then given was reduced</p> <p>7 to stenotype in the presence of said witness,</p> <p>8 afterwards transcribed by me; the foregoing is a</p> <p>9 true record of the testimony so given; and this</p> <p>10 deposition was taken at the time and place</p> <p>11 specified on the title page.</p> <p>12 Pursuant to Rule 30(e) of the Fed. R. Civ. P.,</p> <p>13 the witness and/or the parties have waived review</p> <p>14 of the deposition transcript.</p> <p>15 I certify I am not a relative, employee,</p> <p>16 attorney or counsel of any of the parties hereto,</p> <p>17 and further I am not a relative or employee of any</p> <p>18 attorney or counsel employed by the parties hereto,</p> <p>19 or financially interested in the action.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>21 and affixed my seal of office at Columbus, Ohio, on</p> <p>22 _____, 2008.</p> <p>23 _____</p> <p>24 Stacy M. Upp, Notary Public - State of Ohio</p>

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